

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

PHILLIP and JANE DWIGHT,

No. 13-10653

Debtor(s).

Memorandum on Motion to Avoid Lien and Objection to Confirmation

Chapter 13 debtors Phillip and Jane Dwight filed their petition on March 29, 2013. At that time, they scheduled their home at 2136 Service Court in Santa Rosa as being worth \$290,000. The parties stipulate that the Dwights owe \$320,000 to the senior lender. As part of their Chapter 13 plan, they seek to avoid the second deed of trust of creditor Cheryl Gilboy securing a debt of \$30,000. The Gilboy lien is avoidable if the value of the property does not exceed the amount owed to the holder of the senior deed of trust. Gilboy opposes the motion to avoid her lien and objects to the Dwight's plan.

Both sides submitted expert testimony from qualified appraisers. The Dwights' appraiser valued the property at \$280,000 as of the date of the bankruptcy petition. Gilboy's appraiser valued the property initially as having a value of \$375,000 as of the petition date without having seen the inside. After examining the inside, he reduced his value to \$350,000 as of the petition date but says that the property has appreciated during the six months since then and is now worth \$375,000. The court has problems with the testimony of both appraisers.

The Dwights' appraiser inexplicably used a figure of 1515 square feet in comparing the Dwight home to other properties. He also ignored a later sale of one of the similar properties he used. He also

1 testified that there had been little or no appreciation the last six months, which was directly contrary to  
2 Gilboy's appraiser, who is more experienced.

3         Gilboy's appraiser changed his opinion of value after he inspected the inside of the home.  
4 However, he was less than forthright in failing to explain that one of the reasons for his revised  
5 appraisal is that he got the number of bedrooms of the home wrong, even though the Dwights had  
6 noted the correct number in their schedules.

7         After considering all of the evidence, the court believes that the property was worth \$300,000  
8 on March 29 and is worth \$320,000 today. The court so finds, and will accordingly grant the motion.

9         Although it is not a necessary determination given the above finding of value, the court  
10 believes that in a Chapter 13 case the proper date of valuation is the date of filing. See, e.g., *In re*  
11 *Vallejo*, 2010 WL520698\*4 (Bkrtcy.N.D.Cal.2010) and cases therein cited. While there is authority to  
12 the contrary, the court notes that unlike other chapters a Chapter 13 plan must be filed at the same time  
13 as the petition or within a few days thereafter and the debtor must begin performing the plan  
14 immediately. 11 U.S.C. § 1326(a)(1); Rule 3015(b) of the Federal Rules of Bankruptcy Procedure. It  
15 is unfair to deny debtors a right due to the passage of time when the delay in obtaining a date for an  
16 evidentiary hearing may well be caused by the court's crowded docket, the caseload of a Chapter 13  
17 trustee, or difficulty obtaining an appraisal. The better rule is that the petition date is the relevant date  
18 absent an inordinate delay not present here.

19         For the foregoing reasons, Gilboy's opposition will be overruled. The motion to avoid her lien  
20 will be granted and the plan confirmed. Counsel for the Dwights shall submit an appropriate form of  
21 order approved by the Chapter 13 trustee and counsel for Gilboy.

22  
23 Dated: October 14, 2013

24  
25   
26 Alan Jaroslovsky  
Chief Bankruptcy Judge